

APPEAL, STAFF REPORT & RECOMMENDATION TO THE HEARINGS EXAMINER

Form DS1701



Project Name: Lakeside Industries Hot Mix Asphalt Plant

Case Number: APL2006-00009

Location: The site is located between NE Caples Road and NE 151st Street about 2,000 feet east of SR503 in the Brush Prairie Rural Center.

Request: Construct a 5,400 square foot shop, 1,867 square foot office and a hot-mix asphalt plant on 16.24 acres of land in Brush Prairie, WA

Appeal Issues: The appellants are appealing the adequacy of the Final Environmental Impact Statement.

Hearing Examiner: Joe Turner

Neighborhood Contact: Greater Brush Prairie Neighborhood Association; Sam Kim, President; 14915 NE 126 Avenue; Brush Prairie, WA 98606 896-7119 ; E-mail: brushprairie@comcast.net

Public Hearing Date: June 20, 2006

RECOMMENDATION

Uphold Planning Director's Determination

Team Leader Initials: _____ Date Issued: June 5, 2006

County Review Staff: Terri Brooks

Legal Description: Tax lots 140,174 (197012), 126 (196998), 135 (197007) and 162 (197034) located in the NE quarter of Section 22, Township 3North, Range 2 East of the W.M.

Comp Plan Designation: RI

Applicable Laws: Clark County Code Chapters 9 (Public Peace, Safety and Morals); 12.05A (Transportation), 12.40 (Concurrency), 13.08A (Sewerage System); 13.26A (Water Quality); 13.29 (Storm Water and Erosion Control); 13.36 (Wetlands);

13.51 (Habitat Conservation); 13.70 (Critical Aquifer Recharge Areas); 15 (Fire Code), 20.50 (SEPA), 17.105 (Legal Lot Determination); 18.200 (Establishment of Zone Districts); 18.317 (Industrial Zone District); 18.600 (Procedures); 18.402A (Site Plan Review); 13.40A (Water Systems); and State law RCW 58.17 (Plats and Subdivisions); RCW 70.94 (Washington Clean Air Act); WAC 246-290 (Public Water Supplies); WAC 246-272 (On-Site Sewage Systems) WAC 197-11 (SEPA Rules); 43.21C RCW (State Environmental Policy); and SWAPCA400 (Southwest Washington Air Pollution Control Authority)

Project Description

The applicant proposes to construct a phased development that will consist of a hot mix asphalt batch plant, a 1,867 square foot office and a 5,400 square foot vehicle maintenance building and fuel island. Phase 1 is proposed as the office and the asphalt plant, phase 2 is the vehicle maintenance building with fuel island.

The site is located in the Brush Prairie Rural Center between NE 151st Street and NE Caples Road. The Lewis and Clark railroad bisects the property. The applicant is proposing to cross the railroad tracks with a driveway for truck access for maintenance and fueling to the southern portion of the property. The site is zoned Heavy Industrial (MH) and currently consists of a large vacant field with an agricultural building in the southwest corner and a grove of trees in the southeastern portion of the site. All existing structures will be removed with this development.

Adjacent land uses and zoning designations are:

- Northeast half of the site there is a legal non-conforming mobile home park zoned Rural Center Residential (RC-1)
- Southeast half of the site there are large lot residential uses zoned Rural-5
- South of the site are residentially used lots zoned Rural Center Commercial (CR-2),
- West of the site are small commercial businesses zoned Heavy Industrial (MH) and Rural Commercial (CR-2).

Background

On January 6, 2006 Clark County issued a Final Environmental Impact Statement (FEIS) for the project. On March 28, 2006 the County issued a Type II Development Review Staff Report & Decision (PSR2000-00078) approving the application with substantial conditions. One of those conditions is that all of the mitigation measures identified in the FEIS be complied with whether described in the FEIS as mandatory or recommended.

The appeal states that it challenges each and every aspect of the FEIS and gives argument for some of the challenges. Without the appellants stating why an issue in the FEIS is being challenged, staff cannot respond to those portions of the appeal. The appeal was submitted as a packet with three (3) separate parts. The first is the letter of appeal signed by the appellants and their legal counsel with an attached letter from Mr. Richard C. Boughner, Retired P.E., the second is an undated unsigned series of comments, and the third is an unsigned document dated March xx, 2006 which contains mostly comments with the ending of the document consisting of an unfinished sentence.

Many of the appeal issues were comments on the DEIS and have been addressed in the FEIS and/or they are comments that should have been submitted in response to the DEIS and are not appropriate at this time however staff will include them.

Appeal Issues and Staff Response

Issues noted in appeal letter signed by the appellants and dated April 11, 2006:

Issue #1:

The appellant's allege defects in the noise analysis in the FEIS because an asphalt plant in Monroe, Washington plant was used to project sound levels and because the FEIS did not include a description of the similarities and difference in the set up and topography of the respective plants. They also allege it was defective because 6dBA of sound was deducted from the Monroe Plant's sound level because of "several identified mitigation measures" that were included in a report for the Monroe plant prepared by JR Engineering, however the Geomatrix report did not identify the report concerning the Monroe Plant and does not indicate if the mitigation measures are the same as those proposed here. They say it does not discuss the methodology in the JR Engineering report that the Geomatrix report relies on.

Response to Issue #1:

The noise analysis uses the hot mix plant Lakeside operates in Monroe, Washington because it is representative and similar to this proposed plant. The noise study in the application dated September 19, 2000 by MFG, Inc. states that the modeling for the Brush Prairie site relied on estimates of noise from expected on-site sources which were based on measurements of similar representative equipment. Since the exact equipment does not exist at the Brush Prairie site, the noise study measured noise from the same type of equipment at a different location. Modeling was used to determine how the noise would travel off-site for this location not for the Monroe location. This is an accepted and appropriate format for the analysis. The 6 dBA deduction of sound was also in the DEIS and no comments were received about it. Also see FEIS Volume II page 4-25, #39.

Issue #2:

The appellant's allege defects in the noise analysis in the FEIS because they included using a low sound option front end loader that was not available until late 2005 in their analysis.

Response to Issue #2:

There is no indication why this should not have been included, just that it should not have been. While the loader was not available until a later date, its specifications had already been determined. The front loader is now available and the applicant's have indicated they will submit a copy of the specification sheet at or before the hearing. (Exhibit 412)

Issue #3:

The appellant's allege defects in the noise analysis in the FEIS because the noise study

did not include train operation noises and train unloading in Hillsboro, Oregon was used to represent the noise level of unloading aggregate from trucks.

Response to Issue #3:

The impacts associated with rail operations within the railroad right-of-way were not required to be evaluated or analyzed in the FEIS because local government regulation is preempted by federal statute. The railroad is part of the common carrier transportation system within the United States and is regulated by the federal Surface Transportation Board (STB). If there is a freight load that needs to be transported it needs to be accommodated. It cannot be denied service. The operator of the railroad may charge additional fees if the line needs improvements to haul a shipper's product but they cannot deny service. There is a federal process to abandon the railroad but there is no evidence that the operator of this railroad has any intention to abandon it. In fact, the railroad recently obtained a \$300,000 track upgrade grant from WSDOT and a \$600,000 Transportation Enhancement grant for a pilot rails with trails project. In addition, in 2004 the county signed a long-term operator lease with the Columbia Basin Railroad Company to operate the line. Beyond this, it presents a legal issue to be argued by both counsels with the outcome to be determined by the Hearing Examiner.

Truck unloading operations of the same material are very similar to train unloading. The sounds of the air release associated with opening and closing of the material doors, clanking sounds of the doors opening and closing, the material dropping onto the underground conveyor and operation of the conveyor itself. Therefore it is appropriate to use train unloading to analyze truck unloading operations of the same material.

Issue #4:

That the noise study should have used traffic noise studies from similar facilities for on-site vehicles and that L25's were averaged and not actual measured.

Response to Issue #4:

Traffic noise studies at different but similar facilities would have included background noise that occurs near that facility. The average noise of different types of vehicles is known and established so using an industry standardized modeling program to analyze the noise has a more predictable and reliable outcome than using vehicle noise from other sites.

There are standardized accepted methods for noise analysis. Geomatrix used a standardized computer modeling program, Traffic Noise Model version 2.5, to model truck noise. The evidence in the record, using standard accepted engineering practices, shows the ability to comply with noise standards and no evidence has been submitted to the contrary.

Issue #5:

The appellants allege that the VOC (volatile organic compounds) of truck loading, ROG's (reactive organic gases) / PM 2.5 Hydrogen Sulfite analysis were not studied or estimated.

Response to Issue #5:

VOC is not modeled because there are no applicable regulatory standards against which modeling can be assessed. Rather VOC is addressed by SWCAA and other federal air quality law by BACT.

The EPA cites significant technical difficulties in estimating, modeling, and monitoring for PM_{2.5}. Accordingly, EPA states that “PM₁₀ may properly be used as a surrogate for PM_{2.5} in meeting NSR requirements. PM_{2.5} is not generated by mechanical means (crushing rock, vehicle road dust), it is only from combustion. So PM_{2.5} does not come from aggregate fines, only combustion.

Hydrogen sulfide analysis was not done because under EPA AP-42 hydrogen sulfide provisions are shown to be insignificant.

During a discussion with Wess Safford with the SW Washington Clean Air Agency (SWCAA), he indicated that the 4 or 5 permits for this type of plant he has reviewed, he has not found any ambient air impacts from PM_{2.5}.

Issue #6:

The appellant states the stormwater runoff information was determined using forecasts, were based on projects that appear to be dissimilar to this proposal and that no information was included discussing the similarities or dissimilarities of the projects used for forecasting.

Response to Issue #6:

The appellant believes that the stormwater water quality analysis on Page 3.3-17 of the FEIS used forecasts based on projects that are dissimilar to the one proposed. This is opinion testimony that must be resolved by the Examiner.

Issue #7:

The appellant points out that the project will cause a 7 – 14 dBA increase in hourly L₂₅ during peak operation under the proposed action and 9 – 11 dBA under Alternative 1. The appellant states that Clark County Substantive SEPA policies on noise say that greater than 5dBA is considered significant.

Response to Issue #7:

CCC 40.570.080 (SEPA and County Decisions) states “it is the policy of the county to require that new sources of noise be limited to the maximum environmental noise levels of Chapter 173-60 WAC; even within these regulatory standards, an increase of more than five (5) decibels (dBA) over ambient noise levels at the receiving properties **may** be considered significant (emphasis added). It does not say it **is** considered significant. Based on the fact that a typical refrigerator operates at 50 dBA and the maximum projected increase from the project will be 12 dBA (night time operations) the project will not cause a significant adverse impact. The opinion of the appellant that it would be a significant adverse impact will need to be substantiated at the hearing. Also see FEIS Volume II, page 4-24 #38.

Issue #8:

The appellants allege that the project will cause a significant increase in water pollution for copper, lead and fecal coliform.

Response to Issue #8:

CCC 13.29.305(H) (2) (a) requires an analysis of the potential for groundwater contamination from the site. The applicant contends that the analysis performed for the FEIS satisfies this requirement, and staff concurs. The appellant's are voicing an opinion but they have not submitted any substantiating evidence that they are correct.

Issue #9:

The appellant's next issues simply state "3. Aesthetics/land use/"scale"/compatibility. See various letters submitted in opposition to project. 4. Air/Odor Impacts. 5. Collective/Marginal Impacts WAC 197-11-335(3) (c)."

Response to Issue #9:

These are simply too vague to respond to. There is not a WAC 197-11-335(3) (c), perhaps WAC 197-11-330(3) (c) is meant? The letters submitted in response to the DEIS were responded to in the FEIS.

Issue #10:

The appellant alleges that the use of the railroad as part of the preferred alternative is inadequate because no information was given on the suitability and condition of the rail facilities to ensure this is a viable alternative and that to the extent noise, air quality and other analyses were made under the assumption that rail would be used, the analysis would be insufficient.

Response to Issue #10:

Suitability of the rail line is not an appropriate analysis for the FEIS. Please see the response to Issue number 3 above.

An objective of the Proposed Action is to utilize the adjacent Clark County railroad as the primary method of the importation of aggregate to the site. However, the importation of aggregate to the site via truck could occur during project initiation and periodically thereafter depending on aggregate source locations, aggregate cost and the comparative cost of rail versus truck shipment. To conservatively analyze conditions with truck importation, Alternative 1 includes the importation of all aggregate to the site via truck.

Noise, air quality and other analyses were done with the assumption that all deliveries would be done by truck rather than rail for Alternative 1 and the Preferred Alternative was analyzed with the assumption that deliveries would be done by rail. Therefore both truck and rail deliveries have been analyzed to the extent allowed to be regulated by the federal preemption for common carrier transportation.

Issue #11:

The appellants allege that the alternatives analyzed in the FEIS are not acceptable under SEPA rules. They assert that Alternative 1 using trucking of aggregate to the site

should be the proposal rather than listed as an alternative. They assert that an alternative should have been to analyze an asphalt batch plant with a lesser volume as an alternative that would avoid or minimize impacts. And the last assertion in this section is that the metal fabrication plant listed as Alternative 2 is a more intense use than the proposal and an alternative showing a less intense use should have been used.

Response to Issue #11:

This issue was addressed in Volume 2 of the FEIS, page 4-62, #2 and page 4-63, #4.

In addition to the cited FEIS responses, the following provides additional information on the choice of a fabricated metal manufacturing facility as a reasonable site use under existing zoning. "Chapter 18.317 of the Clark County Code contains two industrial classifications, Light Industrial (ML) and Heavy Industrial (MH). The ML district is intended to provide for less-intensive industrial uses and the MH district is to provide for uses that are more intensive. Because a fabricated metal manufacturing facility is also permitted in the ML District, this type of use is considered by the Clark County Code as being a use that is less intensive than many MH District uses. Thus, the fabricated metal product manufacturing facility was selected as a use exhibiting an activity level at the lower end of the range of uses allowed in the MH zone."

Issue #12:

The appellants assert that there is a sufficient governmental connection to this project to require an analysis for an off-site alternative. They assert that the County approved the rezoning of the parcel to generate activity and revenue for the "County's largely dormant railroad" and for this reason and that the County as well as other local governments may be "major" customers of this plant, the application should be held to the higher standard for public projects. They also request response to a list of comments on the DEIS.

Response to Issue #12:

Industrial zoning is common along rail lines and other major transportation routes. Industrial uses utilize rail facilities much more than commercial or residential uses do. Clark County is currently reviewing a new "Railroad Industrial" zoning for areas north of Vancouver. This again is an opinion that will need to be substantiated at the hearing and determined by the Examiner.

Whether the county is a customer of this plant or not will be determined by the public bidding process the same as any other new business reviewed under site plan review. Operation of an asphalt plant is not a governmental function so the proposal is not a public project.

Replies to the comments on the DEIS are contained in Volume II of the FEIS.

Issue #13:

The appellants assert that the FEIS fails to comply with the provisions of CCC 18.317.090 regarding noise, air emissions, odors, light, heat and glare; specifically that

the hot mix asphalt and truck loading would not meet the heat and glare requirement to take place within a closed building.

Response to Issue #13:

The asphalt is mixed totally within an enclosed structure. Dispersion necessitates that it be exposed in the truck. To follow the appellant's reasoning, the trucks would need to be kept in an enclosed building until they asphalt cooled making it unusable. Also, in this section of the code "heat and glare" are conjunctive, so the fact that the asphalt mixing produces no "glare" in conjunction with producing "heat" means that this regulation is not applicable in this instance.

Issue #14:

The project should be denied under Substantive SEPA because there are significant not reasonably mitigatable impacts which are:

- Noise
- Land Use/Compatibility/Aesthetics/Scale
- Water Quality/Runoff
- Air/Odor Impacts
- Collective/Marginal Impacts WAC 197-11-335(3)(c)

Response to Issue #14:

WAC 197-11-330(3) (c) which is the citation staff believes the appellants meant, states that "Several marginal impacts when considered together may result in a significant adverse impact". The FEIS has demonstrated that there will not be significant adverse impacts that are not mitigatable and evidence to substantiate the appellant's statement has not been submitted. This is opinion testimony that must be resolved at the hearing by the Examiner.

Issue #15:

The appellants assert that the project does not meet the County stormwater standards.

Response to Issue #15:

The county believes that the preliminary stormwater plan for this project is feasible. This plan is an engineering plan, requiring the stamp of an engineer. The preliminary stormwater plan is just that – preliminary. The preliminary application requires adequate information to demonstrate that this system is feasible. The final engineering plan and Technical Information Report details the implementation of the preliminary plan for construction.

Issue #16:

The appellants assert that additional SEPA review is required for changes made to the preliminary stormwater plan after a SEPA determination is made.

Response to Issue #16:

The SEPA process allows for changes to a proposal to reduce the potential for impacts identified through environmental analysis. Consistent with the intent of SEPA, changes to the stormwater plan were made based on analysis prepared for the Draft EIS, as well

as comments received on the Draft EIS, indicating the potential for surface water quality and quantity impacts from a surface water discharge system.

Issue #17:

The appellants assert that staff erred in concluding that the applicant's drainage plan alternative 2 was feasible because forecasting was used for runoff, infiltration rates and testing and there is no defined emergency overflow with calculations were submitted. They also have concerns that if a redesign of the stormwater ponds is required that there will not be enough space on the site.

Response to Issue #17:

The county believes that the preliminary stormwater plan for this project is feasible. This plan is an engineering plan, requiring the stamp of an engineer. The preliminary stormwater plan is just that – preliminary. The preliminary application requires adequate information to demonstrate that this system is feasible. The final engineering plan and Technical Information Report details the implementation of the preliminary plan for construction.

Issue #18:

The appellant's state that stormwater monitoring should be required per CCC 13.29.305 H (4).

Response to Issue #18:

Mr. Karpinski indicates that groundwater monitoring should be required, per CCC 13.29.305(H) (4). Staff has reviewed the analysis provided in the FEIS, and concurs that all groundwater quality standards would be maintained with the proposed infiltration (see Page 15 of the staff report). This is opinion testimony that must be resolved by the examiner.

Issue #19:

The appellant's assert that infiltration should not be allowed because of significant threat of contamination of groundwater.

Response to Issue #19:

Mr. Karpinski indicates that infiltration should not be allowed because of significant threat of contamination of groundwater, per CCC 13.29.305(H) (1). As stated on Page 15 of the staff report, staff concurs with the FEIS that no adverse impacts to groundwater quality would result from this development. This also is opinion testimony that must be resolved by the examiner.

Issue #20:

The appellants assert the project fails to meet the "public interest standard" in the County's zoning code and that substantial evidence was introduced regarding the affect of this project on local property values in comment letters in the FEIS Volume II. They also assert that in letter 38 of the FEIS Volume II there is evidence introduced regarding the affect of the increased traffic and problems regarding the traffic analysis.

Response to Issue #20:

CCC 18.100.020 contains the purpose statement of the Clark County Zoning Code. This project implements the site's comprehensive plan designation of Rural Industrial (RI), implements the zoning designation of Heavy Industrial (MH) and does or can comply with the development regulations of the zone and in CCC 18.402A. The appellant does not indicate how the project fails to meet the "public interest" standard. It is up to the appellant to bring forward the facts and arguments to support their claim.

No evidence has been introduced other than opinion testimony that the project will adversely affect property values. The "threat" of the project being constructed has not appeared to stop home construction in the area nor requests for land divisions.

The applicant submitted a traffic study for this proposal in accordance with CCC 12.41 (the code section numbering has since changed, and is now called 40.350.020(D)). The proposed development is required to meet the standards established in CCC 41.350.020(G) for corridors and intersections of regional significance within 1 mile of the proposed development. Based upon the analysis in the traffic study, as well as a review of existing 2006 conditions, county staff finds that the proposed development complies with the concurrency ordinance and county safety standards.

Issue #21:

Based on letter 38 of the FEIS Volume II, they assert that the road modification was improperly granted.

Response to Issue #21:

Mr. Karpinski says that the road modification was improperly granted, and refers to Letter 38 in the FEIS Volume II, from Bruce Schaefer. Mr. Schaefer states that the road modification was invalid because the hot mix asphalt plat comprised of four parcels, not one, and because the analysis of the road modification was performed by a "non-engineer. The modification request, as well as all of the review for this project is based on the entire site, not individual parcels. All road modifications are reviewed by, or under the supervision of registered professional engineers. Road modifications are approved or denied by either the County Engineer, or another registered professional engineer working under his authority.

Issues noted in undated and unsigned comments attached to above appeal letter:

Issue #22:

The first two items refer to general issues and show concern that the FEIS uses statements such as "No would be anticipated" or "would not be anticipated to". They state that there should be a statement of definite occurrence or at least a statement that if a particular condition occurs, the applicant be required to mitigate it within a definite time frame. The comments also raise issue with the statements in the FEIS that the applicant "could" be done to relieve a problem that it should be required to do those mitigation items.

Response to Issue #22:

Since which “would or would not be anticipated” that were used in the FEIS are not noted, it is not possible for staff to address except in a very general manner. There are circumstances that are known to occur from a project, there are some that are known not to occur, and there are some that under extremely rare circumstances could occur but would not be anticipated to occur. The applicant is not required to plan for highly speculative events that may or may not occur. The term “significant” is defined under the State Environmental Policy Act (SEPA) Rules as “a reasonable likelihood of more than a moderate adverse impact on environmental quality” (WAC 197-11-794). Statements in the EIS that “significant impacts are not anticipated” or “not expected” indicate that they are not probable and there is not a reasonable likelihood of more than a moderate adverse impact.

This is standard terminology for environmental review and analysis and uses knowledge of a project and similar projects to attempt to anticipate what will actually occur.

The “could” portion that this refers to are actually additional mitigation measures that are required to be done by conditions A-13 and H-1 in the staff report. So they are no longer could, the conditions of approval require that they shall be done.

Issue #23:

The next issue raised is vibration and admits they don’t know if it would be relevant to trucks or the plant but that it is relevant to trains.

Response to Issue #23:

Vibration was not identified as an element to be reviewed through the EIS scoping because there is virtually no potential for the project to cause significant vibration. Also see #35 on page 4-23 of the FEIS Volume II.

See response to Issue #3 above for train operation impacts.

Issue #24:

They question the 130’ odor detection threshold and indicate “common knowledge” that offensive odors can migrate much farther. They point out that depending on the day or time of year it could be drastically different and state that there is no indication how the 1996 Sumner, Washington study site compares to this site, the weather conditions under which data was collected and the number and frequency of collection sessions.

Response to Issue #24:

The odor analysis was done by an Environmental Scientist with expertise in this area. Air quality is generally assessed in terms of whether concentrations of air pollutants are higher or lower than ambient air quality standards set to protect human health and welfare. Agencies that have jurisdiction over ambient air quality in this area are the U.S. Environmental Protection Agency (EPA), Washington State Department of Ecology (DOE) and the Southwest Clean Air Agency (SWCAA). These agencies establish regulations and standard that govern both the concentration of pollutants in the outdoor air and contaminant emissions from air pollution sources. SWCAA commented on this application (Exhibit 218) where they state that “if Lakeside submits a Notice of

Construction application to SWCAA with appropriate pollution and odor control measures, it is unlikely that the facility will cause a significant adverse impact to the neighbors with respect to odor, air pollution or dust.”. SWCAA also lists the control measures. The applicant’s analysis shows that they can meet these standards and no evidence to the contrary has been submitted.

Issue #25:

They question the odor assumptions made in the FEIS, the emissions analysis for the trucks and state the loader is not included as an air pollution contributor.

Response to Issue #25:

See response to Issue #24 above.

Issue #26:

The next issue consists of twenty nine (29) paragraphs dealing with diesel and asphalt fumes toxicity. They state numerous studies have been done that indicate diesel fumes and asphalt fumes are highly toxic in nature and include the locomotives and loaders as well as trucks. They also note numerous documented studies by the EPA and others that have found an array of symptoms caused by exposure to diesel fumes and state that the applicant should be required to operate only diesel trucks less than 15 years old and loaders less than 10 years old. They also suggest that the applicant be required to retrofit older engines and be obligated to upgrade to phase in even cleaner running engines regardless of financial cost.

Response to Issue #26:

The studies quoted and referred to in this section of the appeal have not been submitted. Even if they had, generally those studies have been of and for persons in close and/or enclosed contact with the fumes not persons in an unenclosed area and separated by 100 feet or more. Since the applicant has submitted evidence that they will comply with all state and federal standards for air quality and no evidence to the contrary has been submitted, staff finds that this is opinion testimony that will need to be substantiated at the hearing and determined by the Examiner.

Issue #27:

The document does not quantify the site’s ozone creation.

Response to Issue #27:

Ozone is not emitted as a result of most industrial processes. Emissions of ozone precursors including NOx and VOC’s are tracked to predict impact on ozone levels. See FEIS, Volume I, Appendix B, page 3 for additional response. No evidence to refute the determination has been submitted.

Issue #28:

This section discusses possible adverse impacts on groundwater and asks about truck cleaning.

Response to Issue #28:

As stated on Page 15 of the staff report, staff concurs with the FEIS that no adverse

impacts to groundwater quality would result from this development. This also is opinion testimony that must be resolved by the examiner.

The applicant will be required to keep water from vehicle and equipment washing separate from the stormwater system, per Condition A-4-f (second bullet).

Issue #29:

This section raises issues about noise, objecting to the 12 dBA exterior to interior noise reduction discussed in the FEIS, requesting that the railroad be allowed to only run during daytime hours, that loud, short duration sounds should be considered under equal terms with continuous daily average sounds and asks how much sound attenuation the berms will provide.

Response to Issue #29

The 12 dBA sound level reduction is based on a study by EPA titled "Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare With An Adequate Margin of Safety" dated March, 1974. No substantiation that the EPA study is incorrect or inappropriate has been submitted.

Rail operation issues have been responded to in Issue #3 of this report.

Issue #30:

The next section deals with land use and compatibility issues using quotes from the FEIS and states the FEIS proves the incompatibility of the project with the nearby area. It also states that the statement in the FEIS that the level of intensity would be similar to the commercial use to the northeast of the site and that the zoning of the site is absurd.

Response to Issue #30

West of the site are commercial and warehouse uses as well as residential uses in the CR-2 commercial zone district. West across Caples Road is also a mix of commercial and residential uses. . The EIS indicates that the level of intensity on the site would be greater than that of the residential uses to the east and south. Staff agrees that the intensity of this use will likely be more than the existing bank to the northeast of the site, however this use is permitted outright in the MH zone district. Also see FEIS Volume II page 4-69, #26.

When an application is submitted for a site is not the time to question what a property is zoned. Any questions or protests must be submitted prior to the adoption of the zone.

Issue #31:

This section deals with aesthetics and requests that the applicant be required to plant dense, fast growing tall Evergreen trees on top of the berm and denser groundcover plantings than grass. It requests that they be limited to native and/or drought tolerant species, asks that the existing trees along Caples Road remain and requests lighting on the upper portions of the tower or conveyor be prohibited.

Response to Issue #31:

Douglas fir is the primary tree being planted on top of the berm. The applicant's landscape plan shows that at the time of planting they will be 6 to 7 feet tall and spaced

between 10 to 15 feet on center. That meets the code standard in CCC 18.402A.050 (F) (3) (c). With the exception noted in the staff report for the site plan as conditioned by condition of approval A-6, the landscape plan will meet or exceed county code requirements. Maintenance of landscaping is required for all commercial developments in accordance with CCC 18.402A.050 (F) (6).

Some of the existing trees will need to be removed because they will be in the right-of-way and the applicant is required to widen Caples Road along their frontage. A 4" dbh oak tree will also be removed because it will be in the middle of the new driveway. Frontage along Caples Road will be screened with a landscaped berm. The only open part will be the driveway and area for sight distance.

As required by a mitigation measure for aesthetics, all lighting will use low pressures sodium bulbs, a type of lighting that emits a low-intensity light designed to minimize impacts to surrounding properties and nighttime sky viewing. In addition, lighting will use full cutoff luminaires to direct light onto site areas and away from adjacent properties.

Issue #32:

This issue deals with transportation. It requests a safely-wide pedestrian and biking shoulder should be guaranteed along any roads that would carry additional traffic, asks that the FEIS include possible interference to vehicular traffic from trains crossing the roads and states there should be a requirement for the applicant to ensure the safety of the tracks before the railroad is used.

Response to Issue #32:

A mitigation measure has been imposed that requires the applicant to coordinate with Clark County to analyze the feasibility and extent of re-striping of Caples Road to provide minimum 5' shoulders with 11-foot wide road lanes to improve the general pedestrian conditions along NE Caples Road. Clark County Public Works staff verified that the current striping south of NE 159th St on Caples is 11' travel lanes and the shoulder varies from 2' to 5' (see Exhibit 392).

The FEIS does include a section on train interference to traffic on the roads on page 3.8-4.

The train issues have been responded to in Issue #3 of this report.

Issues noted in unsigned comments dated March XX, 2006 attached to the appeal letter:
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Issue #33:

The letter asserts that the FEIS does not fully evaluate all impacts because more information is needed regarding weather and wind patterns in Brush Prairie, very little specificity i.e. commitment to specific courses of action, imprecise language such as could, if needed and others, noise and air quality decisions are based on averages and

do not account for peak levels, that the FEIS does not provide facts and the railroad impacts are not evaluated.

Response to Issue #33:

The FEIS was completed using established professional standards. The imprecise language such as could and if needed became requirements based on conditions of approval in the staff report. They are not required to plan for highly speculative events that may or may not occur [WAC 197-11-402 (1)] only for those probable adverse environmental impacts that are significant. And impacts from the railroad are subject to federal STB regulations as part of the public common carrier transportation system. Further reasons why the railroad operations are not included in the FEIS are provided in the response to Issue #3 of this report.

Issue #34:

This section states there are irregularities in the stormwater plan and that state and federal permits will also be required for this project.

Response to Issue #34:

The stormwater facilities are sized to detain and infiltrate the 100-year storm event. This is in accordance with county code.

The applicant indicates that the emergency overflow will be directed to the low wetland area near the railroad tracks. This is the natural pre-developed drainage flow. It is staff's belief that runoff from this site will be reduced by this development, as stormwater that runs off the site in the predeveloped condition will now be infiltrated.

The proposed perf-pipe infiltration meets county standards. Whether routing the stormwater from NE 151st Street is a better plan is an opinion that must be resolved by the examiner.

No one disputes that additional permits, outside of county control, are required for this project.

Issue #35:

This section discusses air quality and states that the SCREEN model is not an accepted model to use under 40 CFR 51 Appendix W.

Response to Issue #35:

The air quality issues were raised at the time of the DEIS and were answered in the FEIS Volume II, pages 4-18 #9, 4-21 #'s 27 and 29, 4-61 #1, 4-63 #7, 4-82 #'s 105, 106 and 109, and 4-87 #150. Also see Exhibit 382 for a response from the author of the report, Geomatrix. The SCREEN model was not used.

This portion of the appeal incorrectly raises issues from a table in an EPA report for an asphalt batch plant which this is not. It is an asphalt hot mix plant and there are different standards that apply than for a batch plant.

As a final note on air quality, the applicant must obtain a permit from SWCAA and comply with their standards. Those standards are in place to protect the public and ensure clean air.

Issue #36:

The next section states that the EIS does not identify ground level concentration for several toxics, the existing background concentrations or the corresponding combined risks.

Response to Issue #36:

The air quality analysis included: review of established air quality standards applicable to the site; review of local meteorological data characterization of ambient air quality conditions; identification of emissions sources proposed for the site; prediction of emission concentrations considering local topography with proposed operations; and, comparison of predicted concentrations with established standards (FEIS Volume II page 4-61, #1. The measured ambient pollutant concentrations in Clark County are included in Table 2 on page 5 of the FEIS Volume appendix B.

Issue #37:

Using meteorological data from the Portland Airport is not appropriate.

Response to Issue #37:

Please see FEIS Volume II page 4-21 #29, and page 4-82 #105. This issue has previously been responded to.

Issue #38:

The next section is titled "Additional Air Quality Comments" and state again that using meteorological data from the Portland Airport is not appropriate. They also add that fugitive dust for the aggregate stock piles was not addressed and there is not dust suppression measures detailed. This section includes a statement that "Any standing loss emissions are not acceptable. It must be entirely captured and not compromise our community's air quality". There is also a list of citations from the FEIS with comments after them, most of which have been previously answered in this report or the FEIS except for the assertion that Table 3.2-1 has no footnote c.

Response to Issue #38:

Please see Issue #37 for the Portland Airport meteorological data issue. Fugitive dust from stockpiles were included in the analysis in the FEIS Volume I page pages 3.2-5, 3.2-9 and mitigation measures identified on page 3.2-15.

In the DEIS, the table had no footnote c however in the FEIS it is included. No substantiating evidence for any of the other listed issues has been submitted.

Issue #39:

The next section is titled "Traffic and Community Impact" where it is questioned how the trucks will be kept from going north on Caples Road, state that the traffic study for the site did not take into consideration using rail to transport aggregate for the site or provide a worst case analysis and that it is not current. This section states that the

traffic study does not adequately address children walking or riding their bikes on Caples Road and has a statement about paving NE 153rd Street along the railroad was considered but rejected based on concerns regarding train conflict. It also has a series of statements and indications that the traffic study was done incorrectly regarding accidents. Lastly it asks the applicant to place a notice on the site indicating trucks associated with their facility to not park off-site in the Brush Prairie Community.

Response to Issue #39:

Truck traffic could only go north as far as 159th Street because the bridge crossing Salmon Creek is insufficient to handle the weight of heavy trucks and they are prohibited from using it. The only reason for the trucks to go north would be if they had a paving job in that direction which could occasionally occur causing them to use 159th Street for travel. However, most of the county is more easily accessed by large trucks from SR503 (NE 117th Avenue).

The traffic study was conducted using established engineering practices and which met the requirements in CCC 12.41.

See response to Issue #32 for pedestrian mitigation measures. Also, it is a required mitigation measure that the applicant post signage on their site indicating that parking on NE Caples Road by trucks associated with the asphalt facility is prohibited.

Issue #40:

The next issue questions the photos in the FEIS because of changes that have occurred in the area. This section also states that the previous zone changes from residential to commercial for properties south of this site show that there will continue to be indirect/cumulative impacts and states that the value of residential land decreases with the intensity of proposed industrial use.

Response to Issue #40:

Staff acknowledges that changes have occurred in the area since 2003 after the DEIS was issued. Many of these changes are reflected in the FEIS. Clark County is a fast growing area where changes are occurring weekly if not daily. Available aerial photos do not keep up with how fast development is occurring.

Staff acknowledges that the 3 parcels to the south that were rezoned to commercial used the Industrial zoning of this site as part of their argument for the zone change. However, new residences have continued to be constructed and pre-application conferences for new residential land division continue in the area. Mr. Handlos himself applied for a pre-application conference to residentially divide his land in 2006. There is nothing in the record to show that the value of nearby residential land is decreasing.

Issue #41:

The last section is titled "Sound" and requests that the train idling noise be added to the other noise on the site to look at the cumulative impacts. It asks that vibration from the train and trucks be added then includes a series of statements that appear to be arguing for the project. It then notes that the loaders on the southern half of the site will generate noise and state that the mitigation would allow them to operate within 300 feet of residential property or for 15 minutes every hour and that there is no room between

the infiltration ponds and property lines for a berm. It asks what percentage the noise levels would be higher in the area even if within accepted limits.

Response to Issue #41:

Train operation impacts are address in Issue #3 of this report.

Vibration is addressed in the FEIS Volume II page 4-23, # 35.

Loaders operating on the south parcel are addressed in the FEIS Volume I page 3.5-13 and a mitigation measure has been imposed for operation of the loaders.

Noise levels are reported in “A-weighted decibels” or dBA. A-weighting corresponds to the sensitivity of human hearing at various sound frequencies and takes the ear’s higher sensitivity to mid- and high frequencies into account. Noise levels are not normally reported in percentages.

RECOMMENDATION

Based on the above findings and information in the record, the Development Services Manager recommends the Hearings Examiner DENY the appeal and uphold the Planning Director’s Determination.

Attachments: